

TERMS AND CONDITIONS FOR THE PURCHASE OF EQUIPMENT AND/OR SERVICES

1. Agreement. This Agreement is made and entered into this _____ day _____, _____, (“Effective Date”) by and between SFC Global Supply Chain, Inc., with an address of 115 West College Drive, Marshall, Minnesota 56258 (“SFC”) and _____, with an address of _____ (“Supplier”). SFC and Supplier may also be referred to throughout this Agreement as “party” in the singular, and “parties” when both are referenced.
2. Equipment, Price and Payment. Supplier agrees to sell to SFC, and SFC agrees to purchase from Supplier, the services (“Services”) and the equipment (“Equipment”), as described on Exhibit A to this Agreement (such document collectively describing the “Product(s)”). Additional Products may be purchased subject to these terms and conditions by either (a) updating and adding additional attachments to Exhibit A (containing specifications), or (b) the issuance of a purchase order as mutually agreed by both parties. SFC may condition payments upon receipt of lien waivers and receipt of certificates confirming the payment of suppliers and subcontractors. Supplier shall not charge SFC, and SFC shall not be obligated to pay, any fees other than those specifically agreed to by SFC as set forth in a proposal, statement of work and the alike. Specifications, price and payment terms are set forth on Exhibit A.
3. Title and Risk of Loss. Title to, and risk of loss of, the Equipment shall remain with Supplier until the Equipment is delivered at the FOB point specified in this Agreement or applicable attachment to Exhibit A. If no FOB point is specified, the equipment shall be shipped FOB SFC designated facility.
4. Warranties. Supplier warrants: (A) that the Equipment furnished shall (i) be free from defects in material and workmanship; (ii) conform to necessary requirements and specifications set forth on Exhibit A; (iii) be free and clear of all security interests, liens, charges, or encumbrances of any nature; (iv) not infringe the intellectual property rights of any third party, including trade secret, trademark, copyright and patent rights; (v) be made in compliance with all applicable federal, state, and local laws, ordinances, rules and regulations; and (B) that the Services, including any services conducted or offered by Supplier in conjunction with the purchase of Equipment, shall (i) be furnished by Supplier who has the necessary equipment and personnel with the requisite expertise, certification, experience and skill to render the Services described herein; (ii) be provided in a timely, efficient, competent and workmanlike manner in accordance with the applicable professional standards currently recognized by the applicable industry; (iii) comply with any and all applicable federal, state and local laws, codes, statutes, rules, regulations and ordinances in its performance of the Agreement, and that Supplier holds and maintains all required licensing and certification of the like and kind necessary to provide the Services; and (iv) be provided in an ethical manner that does not detract from the reputation of SFC, SFC’s products, or SFC’s services;. Supplier agrees that it is responsible for the prompt payment of any subcontractors and that all subcontractors utilized will fully comply with the terms of this Agreement regardless of whether those subcontractors actually have signed these terms and conditions.
5. Inspection. All Products shall be received subject to SFC’s right of inspection and rejection. If this Agreement calls for delivery in installments, SFC shall have such right of rejection regardless of whether or not the non-conformity substantially impairs the value of the installment and regardless of the curability of such non-conformity. At or prior to delivery of the Products, Supplier shall deliver to SFC (a) at least three (3) physical copies of the operating manual and one (1) electronic copy version of the operating manual (in a format acceptable to SFC) together with source code and object code (if any) related to the Equipment for programming software; and (b) the Equipment’s Bill of Materials and a recommended list of spare parts (such list shall include Original Equipment Manufacturer (“OEM”), OEM Part Number, and Industry Standard Description (“ISD”)).
6. Change Orders. SFC may at any time, by written change order, suspend performance in whole or in part, make changes in drawings, specifications, method of shipping or packing, or time or place of delivery, require additional work or direct the omission of work. If any such change order causes an increase or

decrease in the cost of, or the time required for the performance of this Agreement, an equitable adjustment shall be made in the contract price, delivery date, or schedule and this Agreement shall be modified accordingly. Any claim for adjustment under this paragraph shall conclusively be deemed waived unless asserted in writing to SFC within thirty (30) days from Supplier's receipt of the change order. Any change order will not be binding on SFC unless it is issued by an authorized purchasing agent of SFC.

7. Force Majeure. Supplier and SFC will each be excused from performing its respective obligations under this Agreement to the extent that such performance is prevented by fire, storm, flood, earthquake, explosion, accidents, riots, acts of God, acts of the public enemy, sabotage, newly enacted laws and regulations that were not anticipated on the effective date of this Agreement, or any other cause beyond the reasonable control of the party that is not able to perform its respective obligations under this Agreement; provided that (a) any party that is unable to timely perform its obligations hereunder due to a force majeure event will use commercially reasonable efforts to resume the timely performance of its obligations as soon as possible; and (b) if that party is unable to resume the timely performance of its obligations hereunder within thirty (30) days after the beginning of that force majeure event, then the other party may terminate this Agreement with ten (10) business days prior written notice to the party that has been unable to perform its obligations hereunder.

8. Termination. Unless otherwise specifically agreed to in writing, either party may terminate this Agreement upon the occurrence of any of the following: a) upon ninety (90) days prior written notice to the other party; b) material breach of any term of this Agreement; c) assignment or attempted assignment of this Agreement without the other party's authorization in accordance with this Agreement; or d) filing by or against a party of any insolvency or bankruptcy proceedings for reorganization, receivership or dissolution.

9. Remedies. Time is of the essence. In the event of Supplier's breach of this contract, SFC may take any or all of the following actions without prejudice to any other rights or remedies available to SFC, including without limitation recovery of consequential damages: (a) require Supplier to repair, replace or refund such equipment, and upon Supplier's failure or refusal to do so, repair or replace the same at Supplier's expense; (b) reject any shipment or delivery containing defective or non-conforming equipment, and return for credit or replacement at SFC's option and at Supplier's cost; or (c) cancel any outstanding deliveries, if applicable, and treat such breach by Supplier as Supplier's repudiation of this contract.

10. Insurance. Supplier agrees to maintain the following insurance coverage as long as may be necessary to respond to claims arising out of the Products sold, delivered or provided to SFC: a) Commercial General Liability: (including but not limited to: premises liability, products and completed operations coverage) limits of liability of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate (limits may be satisfied by primary and/or umbrella or excess insurance and shall include a severability of interests provision and no cross suit exclusions); b) Commercial Auto Liability: limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage, including coverage for owned, non-owned and hired vehicles; c) Workers' Compensation: statutory limits; d) Employer's Liability: limits of liability of not less than \$1,000,000 each accident by accident or disease; and e) Umbrella/Excess Liability: limits of liability not less than \$10,000,000 per occurrence and aggregate covering excess of Employer's Liability insurance, Auto Liability, and the General Liability insurance policies required hereunder; such Umbrella/Excess policies shall be as broad as or broader than the coverage required herein. Supplier must obtain an additional insured endorsement (on or before the effective date of this Agreement) that designates "SFC Global Supply Chain, Inc., and all of its parent, subsidiary and commonly-owned-or-controlled affiliates" as an additional insured under the coverage described above (except for (c) and (d) above).

With respect to any coverage that is issued on a claims-made basis, the retroactive coverage date shall be no later than the date of this Agreement. Further, such claims-made policies shall be maintained or include extended claim reporting for a period of any applicable statute of limitation following the expiration or termination of this Agreement. SFC reserves the right to disallow and refuse carriers with a rating of less than

A-VII by the A.M. Best Company, in which case Supplier shall promptly replace any such substandard carrier with a carrier that satisfies the A-VII rating. The insurance described herein shall be primary and *non-contributing* over any insurance maintained by SFC, and Supplier shall cause its insurers to endorse the required insurance hereunder to waive any rights of subrogation for all policy requirements listed above against SFC and all of its parent, subsidiary and commonly-owned-or-controlled affiliates. Supplier will provide SFC with a certificate evidencing the insurance coverage required herein within thirty days of the Effective Date of this Agreement and Supplier shall be responsible to provide at least thirty days' prior written notice to SFC if such insurance coverage is canceled or materially modified so as not to be in conformance with this Section. All certificates required hereunder shall be sent to: Schwan's Shared Services, LLC, Attn: Insurance Services, 115 West College Drive, Marshall, Minnesota 56258. Approval of any of Supplier's insurance policies by SFC shall not relieve Supplier of any obligations described in this Agreement, and the policy limits described herein shall not be deemed to be a limit or "cap" on Supplier's liability to SFC for any breach of Supplier's obligations or warranties described herein.

11. Indemnification: Supplier will defend, indemnify and hold harmless SFC and any parent, subsidiary or commonly-owned or controlled affiliate company of SFC, and each of those companies' shareholders, officers, directors, managers, employees, successors and assigns (the "SFC Indemnitees") from and against any and all demands, claims, actions, lawsuits, government investigations, hearings, and/or citations (each an "Action") for any judgments, damages, losses, fines, penalties, costs and expenses (including without limitation reasonable legal fees and court costs) related thereto (collectively, "Losses") asserted against or incurred by any of the SFC Indemnitees to the extent any such Action or Loss is caused by or arises from: (i) any breach or violation of any obligation, duty or warranty of Supplier under this Agreement or otherwise; (ii) negligence or any action or omission or conduct or misconduct by Supplier or any of its managers, employees, subcontractors, agents or servants; (iii) any allegation or finding of a violation of any patent, trademark, copyright or similar rights of any third parties arising out of the purchase of the Products; and/or (iv) any violation of any federal, state or local code, statute, law, regulation, or ordinance by Supplier or any of its managers, employees, agents or servants. Notwithstanding the foregoing, Supplier shall not be responsible or liable for, or have any indemnification duties in connection with, any Action or Loss to the extent caused by the negligence of any SFC Indemnitee. SFC shall provide prompt written notice of, and furnish a copy of written communications relating to any claim of indemnification covered hereunder to Supplier. Supplier shall not be obligated to indemnify SFC with regard to any settlement or compromise made without Supplier's prior written consent, provided such consent is not unreasonably withheld.

12. Assignment. This Agreement, including the duties and interests conferred herein, may not be assigned by Supplier without prior written notice to SFC. SFC may assign this Agreement to any subsidiary, affiliate or successor. This Agreement shall be binding upon and inure to the benefit of any permitted successors or assigns of the parties.

13. Notice. Any notice to be given in connection with this Agreement shall be given by either U.S. certified mail (return receipt requested) or by delivery through a nationally-recognized express or "next-day" delivery service (e.g., DHL, Federal Express or United Parcel Service) and shall be deemed delivered on the earlier of the date such notice is received by the addressee, the third day after such notice is deposited into the U.S. Mail, or the second day after such notice is provided to such delivery service, as evidenced by documentation of such receipt or delivery date from the courier, U.S. Postal Service or express delivery service. The proper address for the delivery of any such notice to Supplier or SFC shall be as follows:

If to Supplier:

Attn: _____

If to SFC:

SFC Global Supply Chain, Inc.
115 West College Drive
Marshall, Minnesota 56258
Attn: Sr. Dir of Engineering and Technology

With a copy to:

Schwan's Shared Services, LLC
115 West College Drive
Marshall, Minnesota 56258
Attention: Law Department

14. EEO Compliance. **This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

15. Confidentiality. The parties affirm and agree to continue to be bound by that certain Confidentiality and Non-Disclosure Agreement dated _____, executed by SFC and Supplier, attached hereto as Exhibit B.

16. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Minnesota, except for its choice of law provisions.

17. Standards of Conduct for Business Partners. Supplier acknowledges that it has been provided a copy of the SFC Standards of Conduct for Business Partners, or in the alternative has reviewed such at the following web site: <http://www.theschwanfoodcompany.com/pdf/code-of-conduct-supplier.pdf>

18. Independent Contractors. Supplier enters into this Agreement as, and shall continue to be, an independent contractor.

A. Supplier shall act in accordance with this status and shall not, nor shall its employees, hold itself out as an employee or agent of SFC. Under no circumstances shall Supplier or Supplier's employees or agents look to SFC as their employer, or as a partner, agent, or principal. Supplier and its employees shall not be entitled to, nor shall they make any claim for, any benefits afforded to SFC employees including worker's compensation. Supplier agrees to indemnify SFC against any liability and hold it harmless from and pay any and all loss, damage, cost or expense (including, but not limited to, expenses of investigation, settlement, litigation and attorney's fees incurred in connection therewith) arising out of or in connection with any claim by any of Supplier's employees or personnel other than to the extent such claim is based upon the sole negligence or willful misconduct of SFC.

B. Supplier will pay the wages of the personnel or employees to work at SFC's premises and Supplier will be responsible for withholding all income and social security taxes from those persons' wages and for paying workers' compensation insurance premiums, state and federal unemployment insurance taxes and the employer's share of social security taxes on those persons' behalf.

19. Entire Agreement. This Agreement and any documents expressly incorporated herein by reference embody the entire understanding of the parties and supersede prior documents and discussions regarding the subject matter hereof. This Agreement cannot be changed or modified except in a written instrument signed by a duly authorized representative of the party against whom enforcement of any change, modification or waiver is sought. This Agreement may be executed in any number of counterparts, each of which shall be

deemed an original, but all of which shall constitute as one single agreement between the parties. Copies of this Agreement with signatures transmitted electronically (including by facsimile or by exchange of emails containing signed PDF attachments) shall be deemed to be an original signed version of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement through their duly authorized representatives.

SFC Global Supply Chain, Inc. (“SFC”)

_____ Dated: _____
Name:
Title:

_____ (“Supplier”)

_____ Dated: _____
Name:
Title:

EXHIBIT A

(PLEASE SEE ATTACHED)

EXHIBIT B

(Confidentiality and Non-Disclosure Agreement)

EXHIBIT C

(Please see attached: SFC Standards of Conduct for Business Partners)



**STANDARDS OF CONDUCT
FOR BUSINESS PARTNERS**

Our Expectations of Our Business Partners

